

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5428 OF 1991

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

PARMAR SAMUEL S & ANR.
VERSUS
XAVIER TECHNICAL INSTITUTE & ORS.

Appearance:

MR BP TANNA for petitioner
M/S.TRIVEDI & GUPTA for Respondent No.1, 3
MS MANISHA LAVKUMAR for Respondent No.2

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 5/09/2000

C.A.V. JUDGMENT

#. Initially this petition has been filed by two

petitioners, but on 6.3.98, name of petitioner No.1 was deleted on his request. So this petition is only for one petitioner, i.e. petitioner No.2 who is hereinafter referred to as the petitioner.

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner in this petition under Article 226 of the Constitution to the order dated 5.6.91 of the Director, Xavier Technical Institute, Sevasi, Vadodara, under which his services were brought to an end. From the order annexure-C dated 5.6.91 at page No.15, I find that the services of the petitioner were brought to an end on the ground that in the institution there will be no Mechanical Draftsman and Estimating course/ Department from the next academic year - 1991-92. From this order, I further find that the institution had decided to close the department of Mechanical Draftsman and Estimating from the academic year 1989-90 but as those students who got admission in first year in 1989-90 continued in second year during the academic year, 1990-91, the services of the petitioner were continued.

#. From the reply to the special civil application, I find that from 1987 onwards there was continuous decrease in the number of students appearing in examination for this discipline. As the requisite number of students were not available in the discipline concerned, naturally the decision taken by the institution to close down the department cannot be said to be unreasonable, arbitrary or capricious. The learned counsel for the petitioner has not seriously disputed this aspect of the matter, but what he contended that the petitioner should have been accommodated on any of the post of junior clerk or draftsman or Turner-Instructor. Shri Tanna states that the petitioner possesses the requisite qualification both for the post of junior clerk as well as Turner-Instructor. He further contended in alternate that the petitioner could have been absorbed elsewhere in the institution where subject is there on the post of Instructor.

#. So far as the second argument is concerned, the learned counsel for the petitioner has failed to show any rule or regulation or Resolution or Standing Orders of the State Government where such service condition has been provided. On the retrenchment of the Instructor on closure of the Department in the subject concerned, right of absorption is neither legal or fundamental right. However, such a right can be conferred by the State

Government to the employees of the grant-in-aid institutions by some rule framed under Article 309 of the Constitution of India or by Resolution, Circular or Standing Orders or as a condition of services in the appointment order itself. In this case, it is to be stated that the learned counsel for the petitioner has utterly failed to show any such Regulation, Circular or Standing Order or Rule as well as any condition in the appointment order of the petitioner. From the reply to the special civil application, I find that one of the important service conditions of the appointment of the petitioner was that in case of reduction of the establishment owing to reduction in number of classes or fall in number of certain category of Instructors or closure of a post, studies or of the institution itself or any other bonafide reason, for a similar nature, the management will terminate the services of a permanent employee after giving three months' notice or three months' pay in lieu of the notice. Rejoinder to the special civil application is not there on the record nor it is the statement of the counsel for the petitioner that the same has been filed. In view of this service condition of the petitioner, otherwise also, this claim for absorption elsewhere is difficult to accept. So far as the claim of the petitioner for his absorption either on the post of junior clerk or Turner is concerned, in the reply to the special civil application, it is the case of respondents that the post is not available. This is a question of fact and when the petitioner has not chosen to file rejoinder to the reply to the special civil application, this fact has to be taken to be correct. In this case, none of the legal or fundamental rights of the petitioner are infringed and as a result of which, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. No order as to costs.

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(sunil)